

# **2013 DRAFTING REQUEST**

## **Bill**

Received:	<b>12/5/2012</b>	Received By:	<b>emueller</b>
Wanted:	<b>As time permits</b>	Same as LRB:	
For:	<b>Jim Ott (608) 266-0486</b>	By/Representing:	<b>Jim Ott</b>
May Contact:		Drafter:	<b>emueller</b>
Subject:	<b>Drunk Driving - penalties</b>	Addl. Drafters:	
		Extra Copies:	<b>PJH</b>

Submit via email: **YES**  
 Requester's email: **Rep.OttJ@legis.wisconsin.gov**  
 Carbon copy (CC) to:

## **Pre Topic:**

No specific pre topic given

## **Topic:**

Seizure and forfeiture of motor vehicle used in 3rd and subsequent OWI.

## **Instructions:**

See attached.

## **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 1/28/2013			_____			
/P1		evinz 2/4/2013	jmurphy 2/4/2013	_____			
/1	emueller 2/6/2013			_____	mbarman 2/4/2013	mbarman 2/4/2013	State S&L
/2		evinz	jfrantze	_____	sbasford	sbasford	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		2/6/2013	2/7/2013	_____	2/7/2013	2/7/2013	S&L

FE Sent For:

*at itro*  
*3/14*

<END>

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/1					mbarman 2/4/2013	mbarman 2/4/2013	State S&L

12 EVN 2/16/13  
 12 ev 2/6/13  
 Jo 2/1  
 Re 2/1

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**<END>**

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/?	emueller 1/28/2013			_____			
/P1		evinz 2/4/2013	jmurphy 2/4/2013	_____			
/1				_____	mbarman 2/4/2013		State S&L

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Seizure and forfeiture of motor vehicle used in 3rd and subsequent OWI.

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/?	emueller						
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/1	Em 1/28/13	1 rev 2/4/13	Jim 2/4/13	Jim+RS 2/4/13			
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FE Sent For:

<END>

Jacket  
for  
Assembly  
please

4

## STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

12/5 Rep. Jim Ost

- Require judge to direct local law enforcement to seize veh. of driver involved in 3rd OWI
  - no hardship exception
  - whatever veh. used - D's or borrowed
  - not rental thing



Note  
State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0732/1

EVM:.....

PMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In 1/28/13

Soon

gen

- 1 AN ACT ...; relating to: seizure and forfeiture of motor vehicles used in certain  
2 operating-while-intoxicated offenses and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

INS -  
Analysis

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

346.653

- 3 SECTION 1. 346.65 (6) of the statutes is created to read:  
4 346.65 (6) The court shall order a law enforcement officer to seize the motor  
5 vehicle used in a violation or improper refusal under s. 343.305 (10), 346.63 (1) or (2),  
6 940.09 (1), or 940.25 if the person committing the violation or making the improper  
7 refusal has 2 or more prior suspensions, revocations, or convictions, counting  
8 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other  
9 suspensions, revocations, or convictions counted under s. 343.307 (1). After seizure

no  
change

1 of the motor vehicle, the district attorney shall institute proceedings under s. 973.076  
2 regarding the vehicle seized under this subsection.

3 **SECTION 2.** 973.075 (1) (b) 1m. h. of the statutes is created to read:

4 973.075 (1) (b) 1m. h. In a violation or improper refusal under s. 343.305 (10),  
5 346.63 (1) or (2), 940.09 (1), or 940.25 if the person making the improper refusal or  
6 committing the violation has 2 or more prior suspensions, revocations, or convictions,  
7 counting convictions under s. 940.09 (1) and 940.25 in the person's lifetime, plus  
8 other suspensions, revocations, or convictions counted under s. 343.307 (1). A vehicle  
9 under this subsection is subject to seizure only upon court order under s. 346.65 (6).

10 **SECTION 3.** 973.075 (1) (b) 2m. b. of the statutes is amended to read:

11 973.075 (1) (b) 2m. b. No Except a vehicle seized under subd. 1m. h., <sup>subdivision</sup> ~~no vehicle~~ <sup>and subject to subd. 2m. b.m.g.</sup>  
12 is subject to forfeiture under ss. 973.075 to 973.077 by reason of any act or omission  
13 established by the owner of the vehicle to have been committed or omitted without  
14 his or her knowledge or consent.

15 **SECTION 4.** 973.075 (1) (b) 2m. bm. of the statutes is created to read:

16 973.075 (1) (b) 2m. bm. No vehicle seized under subd. 1m. h. is subject to  
17 forfeiture under ss. 973.075 to 973.077 if the owner of the vehicle establishes that the  
18 vehicle is owned by a rental company, as defined in s. 344.51 (1g) (c), the vehicle was  
19 operated at the time of the violation or improper refusal by or with the consent of the  
20 renter, and the improper refusal or violation was committed without the company's  
21 knowledge or consent. No vehicle seized under subd. 1m. h. is subject to forfeiture  
22 under ss. 973.075 to 973.077 if the owner of the vehicle establishes that the vehicle  
23 was operated at the time of the violation or improper refusal without his or her  
24 knowledge or consent.

J

1           **SECTION 5.** 973.075 (2) (intro.) of the statutes is amended to read:

2           973.075 (2) (intro.) A law enforcement officer may seize property subject to this

3           section upon process issued by any court of record having jurisdiction over the

4           property. Except for vehicles seized under s. ~~346.65 (6)~~<sup>346.653</sup> or used in the commission of

5           a crime in violation of s. 944.30, 944.31, 944.32, 944.33 or 944.34, seizure without

6           process may be made under any of the following circumstances:

7           History: 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285; 1999 a. 45, 51, 186; 2001 a. 16, 91.

7           **SECTION 6. Initial applicability.**

8           (1) This act first applies to refusals made or violations committed on the

9           effective date of this subsection.

10                           (END)

DNote

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0732/P1dn

EVM:.....

5-A  
eev

date

ATTN: Rep. Jim Ott

Please review the attached draft carefully to ensure that it is consistent with your intent. The following are several issues you may wish to consider in your review of this draft.

1. Please review the set of violations that can result in a seizure and forfeiture under this draft. The covered violations are essentially the in-jurisdiction motor-vehicle-related offenses counted under s. 343.307 (1), stats. Please let me know if you want to include violations not listed or if you wish to remove violations currently covered by the draft.

2. The seizure and forfeiture of a motor vehicle under this bill follows the existing procedure in ss. 973.075 to 973.077, stats. Under this procedure there are some existing protections for certain owners. See s. 973.075 (1) (b) 2m., stats. This draft does not alter the existing protection for vehicles owned by common carriers (973.075 (1) (b) 2m. a., stats.) or holders of security interests (973.075 (1) (b) 2m. c., stats).

This draft does alter the existing protection for innocent owners. Under this draft and unlike most other authorized seizures and forfeitures, vehicles of most innocent owners will be subject to seizure and forfeiture. Certain vehicles owned by rental companies and vehicles operated without the knowledge or consent of the owner are excepted from forfeiture. Please let me know if you would like any changes to this portion of the draft.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Eric V. Mueller  
Legislative Attorney  
Phone: (608) 261-7032  
E-mail: eric.mueller@legis.wisconsin.gov

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB  
EVM:.....

INS-Analysis

Under current law, a law enforcement agency may acquire certain property involved in the commission of crime through a forfeiture proceeding. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime and certain other property related to the commission of a crime.

Also under current law, no one may operate a motor vehicle while under the influence of an intoxicant or with a prohibited blood alcohol concentration or with a detectable amount of a restricted controlled substance in his or her blood. A person who does so, or who improperly refuses a field sobriety test, is guilty of an offense related to operating while intoxicated (OWI-related offense) and is subject to forfeitures or fines and periods of imprisonment that increase with each subsequent OWI-related offense.

Under this bill, if a person commits a third or subsequent OWI-related offense, the sentencing court must also order that the vehicle used in the offense be seized.<sup>✓</sup> The district attorney prosecuting the offense must then initiate a forfeiture proceeding regarding the vehicle.<sup>✓</sup> The seizure and forfeiture requirement does not apply to a rental vehicle or a vehicle that was operated without the knowledge or consent of the owner.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0732/1dn  
EVM:eev:jm

February 4, 2013

ATTN: Rep. Jim Ott

Please review the attached draft carefully to ensure that it is consistent with your intent. The following are several issues you may wish to consider in your review of this draft.

1. Please review the set of violations that can result in a seizure and forfeiture under this draft. The covered violations are essentially the in-jurisdiction motor-vehicle-related offenses counted under s. 343.307 (1), stats. Please let me know if you want to include violations not listed or if you wish to remove violations currently covered by the draft.

2. The seizure and forfeiture of a motor vehicle under this bill follows the existing procedure in ss. 973.075 to 973.077, stats. Under this procedure there are some existing protections for certain owners. See s. 973.075 (1) (b) 2m., stats. This draft does not alter the existing protection for vehicles owned by common carriers (973.075 (1) (b) 2m. a., stats.) or holders of security interests (973.075 (1) (b) 2m. c., stats).

This draft does alter the existing protection for innocent owners. Under this draft and unlike most other authorized seizures and forfeitures, vehicles of most innocent owners will be subject to seizure and forfeiture. Certain vehicles owned by rental companies and vehicles operated without the knowledge or consent of the owner are excepted from forfeiture. Please let me know if you would like any changes to this portion of the draft.

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Eric V. Mueller  
Legislative Attorney  
Phone: (608) 261-7032  
E-mail: [eric.mueller@legis.wisconsin.gov](mailto:eric.mueller@legis.wisconsin.gov)

**Barman, Mike**

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**From:** Mueller, Virginia  
**Sent:** Tuesday, February 05, 2013 10:41 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -0732/1 Topic: Seizure and forfeiture of motor vehicle used in 3rd and subsequent OWI.

Please Jacket LRB -0732/1 for the ASSEMBLY.

02-05-13  
Draft Jacketed yesterday  
↓  
called and left a message  
for Virginia

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

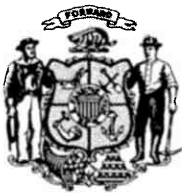
Legal (608-266-3561)

LRB

2/5

Rep. Jim Ott

0732 - p. 2, ln. 2 shall → may



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-07321 12  
EVM:eev:jm

2013 BILL

In 2/6/13

Stays

RMR

pb

Soon

1 AN ACT *to amend* 973.075 (1) (b) 2m. b. and 973.075 (2) (intro.); and *to create*  
2 346.653, 973.075 (1) (b) 1m. h. and 973.075 (1) (b) 2m. bm. of the statutes;  
3 **relating to:** seizure and forfeiture of motor vehicles used in certain  
4 operating-while-intoxicated offenses and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, a law enforcement agency may acquire certain property involved in the commission of crime through a forfeiture proceeding. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime and certain other property related to the commission of a crime.

Also under current law, no one may operate a motor vehicle while under the influence of an intoxicant or with a prohibited blood alcohol concentration or with a detectable amount of a restricted controlled substance in his or her blood. A person who does so, or who improperly refuses a field sobriety test, is guilty of an offense related to operating while intoxicated (OWI-related offense) and is subject to forfeitures or fines and periods of imprisonment that increase with each subsequent OWI-related offense.

Under this bill, if a person commits a third or subsequent OWI-related offense, the sentencing court ~~must~~ <sup>may</sup> also order that the vehicle used in the offense be seized. The district attorney prosecuting the offense must then initiate a forfeiture proceeding regarding the vehicle. The seizure and forfeiture ~~requirements do~~ not apply to a rental vehicle or a vehicle that was operated without the knowledge or consent of the owner.

If a seizure is ordered,

provisions in this bill do

**BILL**

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1        **SECTION 1.** 346.653 of the statutes is created to read:

2        **346.653 Seizure of Motor Vehicles.** The court <sup>may</sup> ~~shall~~ order a law enforcement  
3        officer to seize the motor vehicle used in a violation or improper refusal under s.  
4        343.305 (10), 346.63 (1) or (2), 940.09 (1), or 940.25 if the person committing the  
5        violation or making the improper refusal has 2 or more prior suspensions,  
6        revocations, or convictions, counting convictions under ss. 940.09 (1) and 940.25 in  
7        the person's lifetime, plus other suspensions, revocations, or convictions counted  
8        under s. 343.307 (1). After seizure of the motor vehicle, the district attorney shall  
9        institute proceedings under s. 973.076 regarding the vehicle seized under this  
10       section.

11       **SECTION 2.** 973.075 (1) (b) 1m. h. of the statutes is created to read:

12       973.075 (1) (b) 1m. h. In a violation or improper refusal under s. 343.305 (10),  
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14       committing the violation has 2 or more prior suspensions, revocations, or convictions,  
15       counting convictions under s. 940.09 (1) and 940.25 in the person's lifetime, plus  
16       other suspensions, revocations, or convictions counted under s. 343.307 (1). A vehicle  
17       under this subdivision is subject to seizure only upon court order under s. 346.653.

18       **SECTION 3.** 973.075 (1) (b) 2m. b. of the statutes is amended to read:

19       973.075 (1) (b) 2m. b. ~~No~~ Except a vehicle seized under subd. 1m. h., and subject  
20       to subd. 2m. bm., no vehicle is subject to forfeiture under ss. 973.075 to 973.077 by

**BILL**

1 reason of any act or omission established by the owner of the vehicle to have been  
2 committed or omitted without his or her knowledge or consent.

3 **SECTION 4.** 973.075 (1) (b) 2m. bm. of the statutes is created to read:

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10 under ss. 973.075 to 973.077 if the owner of the vehicle establishes that the vehicle  
11 was operated at the time of the violation or improper refusal without his or her  
12 knowledge or consent.

13 **SECTION 5.** 973.075 (2) (intro.) of the statutes is amended to read:

14 973.075 (2) (intro.) A law enforcement officer may seize property subject to this  
15 section upon process issued by any court of record having jurisdiction over the  
16 property. Except for vehicles seized under s. 346.653 or used in the commission of  
17 a crime in violation of s. 944.30, 944.31, 944.32, 944.33 or 944.34, seizure without  
18 process may be made under any of the following circumstances:

19 **SECTION 6. Initial applicability.**

20 (1) This act first applies to refusals made or violations committed on the  
21 effective date of this subsection.

22 (END)